

SECTION 1. AUTHORITY, SCOPE, AND REVISIONS

1.1 TITLE

These regulations will be known and cited as: THE REGULATIONS GOVERNING SOIL DISPLACEMENT AND DISPOSAL IN THE EAST HELENA SUPERFUND AREA IN LEWIS AND CLARK COUNTY, MONTANA.

1.2 AUTHORITY

The Lewis and Clark City-County Board of Health promulgates these regulations under the authority of Section 50-2-116(2) (c) (v), Montana Code Annotated (MCA).

1.3 FINDINGS

The Lewis and Clark City-County Board of Health finds that:

- (1) The United States Environmental Protection Agency (EPA) has identified and designated the City of East Helena and the surrounding area as a Superfund site and in 1984 placed the site on the EPA's National Priorities List for clean-up and remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and
- (2) The East Helena Superfund Site, Operable Unit No. 2, Residential Soils and Undeveloped Lands: Final Record of Decision (ROD), September 2009, identifies institutional controls that have been selected and approved by the EPA; and
- (3) The lead smelter, formerly owned by ASARCO, was the primary source of lead and arsenic soil contamination; and
- (4) East Helena and the surrounding area, as shown on the Administrative Boundary map attached to these regulations as Appendix A, contains lead and arsenic contaminated soils; and
- (5) Regulation of soil displacement within the Administrative Boundary is necessary to prevent lead and arsenic contamination of uncontaminated areas, prevent recontamination of remediated areas, and prevent potential health risks to humans; and
- (6) These regulations are necessary to protect public health and to control environmental lead and arsenic pollution within the Administrative Boundary.

1.4 SCOPE

- (1) These regulations apply only to parcels of land lying within the Administrative Boundary of Lewis and Clark County, exclusive of the Resource Conservation

and Recovery Act (RCRA) corrective action properties, as defined in Section 4 of the 2009 ROD.

- (2) These regulations do not apply to any parcel or portion of a parcel within the Administrative Boundary of Jefferson County.
- (3) These regulations apply to all persons engaging in soil displacement in excess of one cubic yard within the Administrative Boundary.
- (4) These regulations apply to all land use types, including but not limited to residential, commercial, recreational, right-of-ways, and industrial.
- (5) In accordance with Section 9621(e) of Title 42 of the United States Code, nothing contained in this section or these regulations shall require or be construed to require the obtaining of a permit by any agency, employee, or contractor of the United States, the State, or the Montana Environmental Custodial Trust (MECT) for activities conducted entirely within the Administrative Boundary and carried out in compliance with the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., and approved by EPA in consultation with the State.

1.5 REVISION

Revisions to these regulations may be made by the Board as needed to ensure proper administration and to allow for improved mitigation measures or procedures for protecting the previously conducted cleanup activities. The Board must hold a public hearing before any revision to these regulations.

SECTION 2. GENERAL REGULATIONS

2.1 PROHIBITED ACTIVITY

No person shall disturb soil within the Administrative Boundary without first complying with the permit procedures and requirements as provided in Section 3.

2.2 VIOLATIONS

- (1) Failure to have a permit.
- (2) Failure to post the permit at the site.
- (3) Failure to comply with the permit requirements.

2.3 FEES

No fees will be charged either to obtain a permit or to participate in the training or certification program held by the Lead Education and Abatement Program (LEAP) of the Lewis and Clark City-County Health Department.

SECTION 3. PERMIT PROCEDURES AND REQUIREMENTS

3.1 APPLICATION PROCESS FOR PERMIT

- (1) Application for a permit to displace soil within the Administrative Boundary is made by completing a permit application available at the LEAP office, Room 201, East Helena City Hall, 306 East Main Street, East Helena, MT 59635
- (2) The applicant must submit all information required by these regulations before the LEAP staff must begin review of the application.
- (3) The applicant is required to submit information including, but not limited to:
 - a. Name and address of contact person
 - b. Address and legal description of location of proposed activity
 - c. Description of the proposed activity
 - d. Depth of any proposed excavation
 - e. Volume of soil to be excavated or displaced
 - f. Describe proposed method for controlling contaminated dust.
 - g. Describe proposed method for controlling contaminated-soil handling.
 - h. Location of final disposal site.
 - i. Source of replacement soil.
 - j. Name of contractor, if applicable.
- (4) Upon receipt of a complete application, LEAP staff must schedule an appointment within 5 working days to finalize the project plan. During the appointment, LEAP staff will develop a project timeline with the applicant. The project timeline will include:
 - a. Start date
 - b. Proposed end date
 - c. Proposed date and time of final inspection
- (5) Prior to permit approval, LEAP must review existing soil sampling and cleanup information for the applicant's site, if any exists.
- (6) If no record of sampling or cleanup exists, the applicant may be required to sample soil for lead or arsenic following LEAP/EPA sampling protocol and the requirements of the 2009 ROD.
- (7) The applicant or the applicant's representative must attend training for certification as described in Section 4.
- (8) Upon applicant's compliance with the requirements of this Section, LEAP must issue a permit in writing and the applicant or the applicant's representative must comply with the terms of the permit.
- (9) Upon completion of the project, the applicant or the applicant's representative must notify the LEAP staff that the project is ready for a final inspection to determine compliance with these regulations.

- (10) Upon final inspection and approval of the project, LEAP staff must file the permit and documentation of project completion in the LEAP office. Summary information must be entered into the Soils Database and will become part of the permanent site record. The permit will be the official record of compliance with the 2009 ROD and will be maintained on file for public review.
- (11) Permits are valid for 1 year after date of issue. If work is not completed within 1 year, a new permit must be obtained.
- (12) All permits issued by LEAP must be in compliance with the conditions set forth in the 2009 Record of Decision and must take into account:
 - a. Land use
 - b. Soil concentration of lead and/or arsenic.
- (13) Administrative review of permit conditions is conducted by the Lewis and Clark County Health Officer or his/her designee.

3.2 CONTROL OF EXCESS SOIL DISPOSAL AND REPLACEMENT SOIL STANDARDS

- (1) All excess soils from any property within the Administrative Boundary which is determined by LEAP to be contaminated must be transported by the applicant or the applicant's representative to an EPA approved repository.
- (2) Excess soil from residential areas may be reused only on the property of origin if applicant demonstrates that lead concentrations are under 500 milligrams per kilogram(mg/kg) and arsenic levels are below 176 mg/kg.
- (3) Soil brought in for replacement or backfill will meet the standards listed in Table 3-2 .

TABLE 3-2 REPLACEMENT SOIL REQUIREMENTS

Parameter	Requirements
Lead	≤ 50 mg/kg
Arsenic	≤ 30 mg/kg

3.3 CLEANUP ACTION LEVEL

- (1) Soils from qualified residential yards and vacant lots developed prior to the release of the 2009 ROD on September 17, 2009, will have soils excavated and disposed of when any section of a yard is found to have a soil lead concentration greater than 1,000 milligrams/kilogram (mg/kg). All portions of the yard with soil lead greater than 500mg/kg will be cleaned up.
- (2) Clean-up criteria for all land uses are listed in Table 3.3

Table 3.3 East Helena Superfund Site Operable Unit 2 Clean-up Criteria

Land Use	Frequency of use	Cleanup Criteria	
		Lead	Arsenic
Existing Residential and Public Use	Frequent or daily	If any sample unit is greater than 1,000 mg/kg, then all areas greater than 500 mg/kg	Yard average greater than 100 mg/kg
Proposed Residential and Public Use	Frequent or daily	Greater than 500 mg/kg	Greater than 100 mg/kg
Roads, Alleys, and Railroad Rights-of-Way (ROWs)	Adjacent to occupied residential or public use	Greater than 1,000 mg/kg	Greater than 100 mg/kg
	Adjacent to Recreational or Industrial/Commercial	See Land Use	See Land Use
Drainages, Floodplains, and Irrigation Ditches	Adjacent to occupied residential or public use	Greater than 1,000 mg/kg	Greater than 100 mg/kg
	Adjacent to Recreational or Industrial/Commercial	See Land Use	See Land Use
Recreational Land	Infrequent	Greater than 3,245 mg/kg	Greater than 794 mg/kg
Industrial/Commercial	Frequent or daily	Greater than 1,482 mg/kg	Greater than 572 mg/kg
Agricultural/Undeveloped Land	Infrequent	Greater than 3,245 mg/kg	Greater than 794 mg/kg
	Frequent or Actively Managed	Greater than 1,482 mg/kg	Greater than 572 mg/kg

Note: mg/kg = parts per million = milligrams per kilogram (mg/kg)

SECTION 4.0 CERTIFICATION PROGRAM

4.1 CERTIFICATION

- (1) Certification means that a person has demonstrated knowledge of these regulations and is able to undertake projects in compliance with these regulations. In most situations this process should take less than one hour to complete.
- (2) Certification is free.
- (3) Applicants, applicant's representatives, contractors, construction workers, and property owners may obtain certification from LEAP. Certification is a privilege extended to an applicant, contractor, construction worker, and property owner, and is not a right.
- (4) Application for certification must be in writing and must contain the name, address, and phone number of the individual and other information deemed necessary by LEAP.

- (5) To become certified, an individual must attend and satisfactorily complete the LEAP's certification program:
 - (a) Training will be provided by LEAP on an appointment basis, as needed.
 - (b) Training includes, but is not limited to the following topics:
 - Reducing or eliminating exposure to lead from soil during excavation.
 - Information about personal protective clothing.
 - Requirements for covering loads of soils prior to hauling to reduce blowing dust.
 - Methods and best management practices for dust control at construction sites.
 - Proper cleaning of equipment before leaving a construction site.
 - Acceptable disposal or reuse of excess soils.
- (6) Certification will depend upon completion of training and passing a test administered by LEAP staff.
- (7) Certification is valid for one year.
- (8) Certification is a prerequisite for any excavation of soil.
- (9) Any person may attend training and become certified.

4.2 RECORDS FOR CERTIFICATION

All applicants or their designated representatives ***must*** maintain and submit to LEAP such data and records, as are required, to determine compliance with these regulations.

SECTION 5. ENFORCEMENT AND SEVERABILITY

5.1 ACCESS RIGHTS

- (1) The LEAP staff is authorized and directed to make such inspections as are necessary to determine compliance with these regulations.
- (2) It is the responsibility of the owner, occupant, or contractor of a property to give the LEAP free access to the property at reasonable times for the purpose of making such inspections as are necessary for determining compliance with these regulations.
- (3) Failure to allow access will invalidate the permit and record of compliance necessary to document compliance with the 2009 ROD.
- (4) No person may interfere with representatives of the LEAP in the discharge of their duty.

5.2 PENALTIES FOR VIOLATIONS

Violations of any of the provisions of these regulations are a misdemeanor and are punishable as provided for in Section 50-2-124, Montana Code Annotated.

5.3 INJUNCTIONS

The County Attorney may commence an action to restrain and enjoin acts in violation of these regulations. Violation of any such injunction is subject to punishment by the issuing court.

5.4 SEVERABILITY

In the event that any section, subsection, or other portion of these regulations is for any reason held invalid or unconstitutional, such section, subsection, or portion will be considered a separate provision of these regulations and such holding will not affect the validity of the remaining portions of these regulations which will remain in full force and effect.

5.5 APPEAL

- (1) Any property owner or his/her representative who disagrees with the conditions or requirements set by LEAP in an issued permit may request a hearing before the Board or its designated hearing officer to appeal the permit requirements.
- (2) The property owner or his/her representative shall provide a description of the proposed activity, and the boundaries and location of the proposed activity and a summary of the reason for the appeal to the Board or its designated hearing officer.
- (4) The Board or designated hearing officer will review the applicant's appeal and the permit conditions at a regularly scheduled board meeting or a specially scheduled appeal hearing.
- (5) The Board or its designated hearing officer shall provide a decision in writing to property owner or his/her representative within 10 working days after the hearing.
- (6) Decisions of the Board or the designated hearing officer may be appealed to District Court.

SECTION 6. DEFINITIONS

ADMINISTRATIVE BOUNDARY means the boundary area identified in Appendix A.

BOARD means the Lewis and Clark City-County Board of Health.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601, et seq. CERCLA is the law that governs Superfund activity.

CLEANED UP means EPA approved remediation methods which may be either in-situ treatments, such as deep tilling, or removal and replacement of contaminated soils.

COMMERCIAL PROPERTY OR SITES means property or sites having profit as a chief aim, excluding daycares, schools, and agricultural property.

CONTAMINATED SOIL means soil containing lead and arsenic in excess of background concentrations.

CUBIC YARD means a volume of soil equal to a cube one yard long on each side, which is approximately the size of an average desk or washing machine.

ENVIRONMENTAL SERVICES DIVISION means the environmental division of the Lewis and Clark City-County Health Department

EPA means the United States Environmental Protection Agency.

LEAD-CONTAMINATED SOIL means soil that contains lead in concentrations sufficient to pose unacceptable health risks to children.

LEAP means the Lead Education and Abatement Program of the Environmental Services Division of the Lewis and Clark City-County Health Department.

PERMIT means the written authorization from the Lead Education and Abatement Program to disturb the soil within the Administrative Boundary.

PERSON means any individual, corporation, company, association, society, firm, partnership, Joint Stock Company or any branch of state, federal or local government; or any other entity that owns rents, or leases property subject to this regulation.

MG/KG means milligram per kilogram and is approximately equivalent to parts per million(ppm).

RCRA means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

RELOCATION means the movement of any volume of soil from one location to another location.

REPOSITORY means an EPA-approved location for the disposition of contaminated soils.

ROD means the 2009 EPA record of decision.

SOIL DISPLACEMENT means the relocation of one cubic yard or more of soil. Soil displacement does not include tilling of agricultural land or gardens when no excess soil is removed from the area.

SOIL SAMPLING means the collection and analysis of surface soil samples taken either as part of the Superfund cleanup action or taken in response to meeting conditions of this permit process.

SECTION 7. REPEALER AND EFFECTIVE DATE

- 7.1** All previous rules, regulations, resolutions and ordinances as adopted by the Lewis and Clark City-County Board of Health governing soil disturbances within the Administrative Boundary are hereby repealed.
- 7.2** These regulations will be in full force and effect
on the _____ day of _____, 20__.
- 7.3** These regulations will be reviewed and evaluated by the Lewis and Clark City-County Board of Health two years from the effective date, and every two years thereafter.